

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Yu	Team: Squad #8	CCRB Case #: 202004276	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 05/31/2020 10:24 PM	Location of Incident: Broadway between East 11th Street and East 10th Street	Precinct: 06	18 Mo. SOL 11/30/2021	EO SOL 5/4/2022	
Date/Time CV Reported Mon, 06/01/2020 8:38 PM	CV Reported At: Other City agency	How CV Reported: E-mail	Date/Time Received at CCRB Mon, 06/15/2020 11:12 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Giuseppe Gentile	09948	952773	SRG 2
2. DC James Mccarthy	00000	885671	PBMS

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Force: An officer struck § 87(2)(b) with a police shield.	

Case Summary

On May 31, 2020, § 87(2)(b) made allegations of police misconduct on the social media platform § 87(2)(b) (Board Review 01). On June 1, 2020, the CCRB received IAB log #2020-13977 noting § 87(2)(b)'s allegations. IAB was also concurrently investigating this incident under case #FI-2020-0419.

On May 31, 2020, at approximately 10:24 p.m., during a police protest in the vicinity of Broadway between East 11th Street and East 12th Street in Manhattan, an officer struck § 87(2)(b) with a police shield multiple times and pushed him (**Allegation A: Force**, § 87(2)(g)). § 87(2)(b) was not arrested or summonsed during this incident.

The investigation received one BWC footage capturing this incident (Board Review 06). The investigation is not in possession of any additional video footage.

Findings and Recommendations

Allegation (A) Force: An officer struck § 87(2)(b) with a police shield.

Known facts and general descriptions:

§ 87(2)(b)'s attorney, § 87(2)(b) informed the investigation and various media outlets that § 87(2)(b) did not wish to pursue the complaint. As such, the investigation never obtained § 87(2)(b)'s statement. None of the news articles, identified by the investigation, covering this incident provided any additional details. As such, the investigation was unable to obtain a detailed description of the subject officer from § 87(2)(b). The investigation is in possession of a Body-Worn Camera (BWC) footage capturing parts of the incident. However, the footage does not show any additional identifying factors (such as shield number, insignias, command, or name) to help identify the subject officer.

BWC:

The CCRB is investigating a separate incident that occurred within the same protest on East 12th Street and Broadway in Manhattan at around the time of this incident under CCRB case number 202003712. Both incident locations fall on the border of the 6th and 9th Precinct.

Two BWC requests were submitted. The initial BWC request only yielded PO Giuseppe Gentile's BWC (Board Review 06 and 15). PO Gentile was assigned to Strategic Response Group 2. CCRB case number 202003712 received multiple BWC footage, including PO Gentile's BWC, but a review of all of the footage showed that only PO Gentile's BWC partially captured the incident. A second BWC request was submitted with additional information including time, location, and additional commands that may have been present as identified from CCRB case number 202003712. The second BWC request using the additional search parameters yielded the same BWC footage and no additional footage (Board Review 14).

PO Gentile's BWC captured this incident starting at 22:05 minutes (Board Review 06). The footage captured § 87(2)(b) on the sidewalk as a black male officer in blue uniform uses his police shield to push § 87(2)(b) back (Board Review 10). § 87(2)(b) stumbles back before catching his fall. § 87(2)(b) then repeatedly asks for his glasses and then an officer hands them to him. The footage did not capture the events that led up to the push or any potential conversation between § 87(2)(b) and the officers.

NYPD Documents Reviewed:

There are no TARU cameras or NYPD-operated cameras at the incident location and there is no TARU footage pertaining to this incident or for case #202003712. Detailed Rosters were provided from Patrol Borough Manhattan South, which covers the incident location, but the Detailed Rosters only noted that the officers were assigned to the vicinity of this protest without any specific assignments (Board Review 13). Although Threat Resistant and Injury Reports and AIDED reports are supposed to be prepared should an officer use force against a civilian or if a non-arrested civilian or officers sustains an injury, they were not prepared for this incident (Board Review 03 and 04).

Concurrent Investigations

The Manhattan District Attorney's Office ultimately did not investigate this incident because they could not get a statement from § 87(2)(b). The investigation received attachments included in the IAB case file (case # FI-419), but none of the attachments provided any additional evidence pertinent to the investigation (Board Review 05). The IAB case was closed as unsubstantiated and the receipt of the entire IAB case file is pending; there is currently no date on when the CCRB will receive the case file. IAB did not receive a statement from § 87(2)(b) and is not in possession of video footage capturing this incident. IAB did not identify the subject officer or any of the commands that were present and stopped its investigation upon attorney § 87(2)(b)'s request.

Ranking Officers

The investigation determined that Deputy Chief (DC) James McCarthy was the highest-ranking officer on scene. The investigations interviewed DC McCarthy on October 19, 2020.

Officers Interviewed

The investigation interviewed PO Gentile on August 14, 2020, because his BWC captured a portion of the incident. In his CCRB testimony, PO Gentile only recalled § 87(2)(b) saying that he lost his glasses (Board Review 08 and 09). PO Gentile did not know what happened between § 87(2)(b) and the officers because PO Gentile was not focused on § 87(2)(b) given the large crowd on the scene. PO Gentile could not identify the subject officer from the footage but stated that the officer was possibly assigned to a regular patrol command because of his uniform. Given the limited description of the officer, the officer could potentially be assigned to one of many commands wearing a patrol uniform. The investigation determined that PO Gentile was not the subject officer because his BWC captured the subject officer.

Deputy Chief (DC) James McCarthy, Executive Officer of Administration for Patrol Borough Manhattan South, was interviewed on October 19, 2020 because the investigation determined that he was the highest-ranking officer on the scene and would have knowledge of the overall protests on the date of incident. DC McCarthy worked from 2:00 p.m. on May 31, 2020 and ended his tour some time on June 1, 2020. He was working at the protests as the Executive Officer and oversaw all of the Mobile Field Forces in Manhattan under 59th Street. DC McCarthy did not prepare any documentation prior or after the protests and did not believe there was a debrief after the protests. DC McCarthy was not equipped with a BWC during the incident and has never been assigned one. DC McCarthy did not record any videos or take any photos during the protests. Prior to May 31, 2020, DC McCarthy did not have any intelligence regarding any planned events, protests, or threats in the vicinity of Broadway and East 12th Street in Manhattan. DC McCarthy was not provided with any instructions on how to handle the protests on May 31, 2020. DC McCarthy was not part of any roster planning or deployment of manpower during the protests. DC McCarthy did not know which commands were present and he did not request for any specific units. DC McCarthy did not recall if he was on Broadway and East 11th Street or where he was at around the time of incident. After

reviewing PO Gentile's BWC, he was not sure if he was captured in the footage and it did not aid in his recollection of the incident. DC McCarthy did not recall giving instructions for the officers to advance towards the protestors. DC McCarthy did not recognize § 87(2)(b) from the footage or the officer who pushed him. DC McCarthy did not know which command the subject officer was from. DC McCarthy was not informed by an officer they used their plastic shield to push someone and he did not instruct an officer to do so. DC McCarthy denied telling officers that they could use their plastic shield to push someone. The investigation determined that the subject officer was not DC McCarthy because the subject officer wore a blue uniform and appeared to be a black male; DC McCarthy is a white male and wore a white shirt during the incident.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 11).

Mediation, Civil and Criminal Histories

- The investigation did not have an opportunity to offer mediation to § 87(2)(b)
- As of July 10, 2020, the New York City office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 07).
- § 87(2)(b)

Squad No.: 8

Investigator: Patrick Yu SI Patrick Yu 11/12/2020
Signature Print Title & Name Date

Squad Leader: Ethan De Angelo IM Ethan De Angelo 11/12/2020
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date

